IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 4975 of 1999

Between:

S.Kaleem Basha, s/o G.S.Fida Hussain, aged about 28 years, r/o Nandyal, Kurnool District.

..... PETITIONER

AND

1. The Chief Engineer, Electricity, A.P.S.E.B., Cuddapah Zone, Cuddapah District.

2. The Superintendent Engineer, Assessments, A.P.S.E.B., Cuddapah.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction declaring the proceedings of the respondents 1 and 2 passed in Appeal No.A.105-98KNL/552/99 dated 30.01.1999 and D.No.458/98 dated 26.09.1998 respectively as illegal and arbitrary.

Counsel for the Petitioner: MR.P.GANGARAMI REDDY

Counsel for the Respondents: SMT.M.VINOBHA DEVI

The Court made the following:

ORDER:

Heard the learned counsel for the petitioner, Sri M. V. Gangarami Reddy, and the learned Standing Counsel for the respondent Corporation, Smt.M.Vinobha Devi.

The petitioner herein, who claims to be running a non-trading rice mill, filed this writ petition, *inter alia*, seeking to assail the impugned proceedings of assessment in regard to certain irregularities found during the inspection conducted on 21.07.1998.

The case of the petitioner in brief is that on 17.07.1998 there was a short circuit and as a result of which, the meter has been replaced. The present inspection was conducted on 21.07.1998 by the respondent authorities alleging that the meter chamber seal Bit No.489846 found left side sealing wire of the seal bit cut and hanging to the meter chamber stud. The groove connected to the sealing wire was completely soldered and re-fixed with adhesive material. Further, the CT chamber seal having seal Bit No.489845 was cut and found that the 3 numbers CT coils were completely burnt. Hylum chamber seal Bit No.489843 with the same impression was found intact and also meter chamber opened and the meter chamber door glass fixing clamps on top side and right side clamp wire found replaced by rusted plates and screwed and sealing wires were also found tampered. Thereupon a show cause notice was issued on

24.07.1998, provisionally assessing the loss sustained at Rs.2,40,869/-. Thereafter, after considering the objections raised by the petitioner, final assessment was also made confirming the same as per orders dated 26.09.1998. On appeal, the said assessment amount was reduced to Rs.1,98,774/-. Hence, this writ petition.

The learned counsel for the petitioner submits that having regard to the fact that the petitioner's rice mill being a non-trading rice mill, it hardly works 7 hours per day that too only in the season. Therefore, the entire assessment is wholly arbitrary. Further, it is also pointed out that the petitioner has already paid 50% of the amount as per the interim orders of this Court dated 11.03.1999 in W.P.M.P.No.6217 of 1999.

The learned Standing Counsel for the respondent Corporation sought to repel the aforesaid contentions on the ground that having regard to the finding of fact arrived at by the authorities below, no indulgence need be shown to the petitioner.

Considering the submissions made on either side and also on perusal of the material, it is seen that there is no dispute to the fact that there was short circuit on 17.07.1998 and during the inspection conducted on 21.07.1998, the aforesaid irregularities were found. This was followed by a show cause notice and provisional assessment. Ultimately, final assessment was made at Rs.2,40,869/- after considering the objections raised by the petitioner. On appeal, the same was reduced to Rs.1,98,774/-. No doubt the petitioner is running a non-trading rice mill, but it cannot be expected to run through out the year and time. Necessarily, it operates only as and when the customer gets the paddy and not otherwise on par with the trading rice mill. However, having regard to the finding of fact given by both the authorities that there was such tampering and irregularities, the same cannot be gone into in this writ petition filed under Article 226 of the Constitution of India. However, by taking into consideration the fact that the petitioner is running a non-trading rice mill, the assessment made is quite on higher side. In view of the same, the

amount so assessed is reduced by 30%.

Accordingly, the writ petition is allowed in part, reducing the final assessment amount i.e., Rs.1,98,774/- to Rs.1,39,281/-. No costs.

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23.12.2004

VGB

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, The Twenty Third Day of December, Two Thousand and Four.

To

1. The Chief Engineer, Electricity, A.P.S.E.B., Cuddapah Zone, Cuddapah District.
2. The Superintendent Engineer, Assessments, A.P.S.E.B., Cuddapah.
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